

(2012) 09 DEL CK 0519
In the Delhi High Court
Case No : MAC. APP. 934 of 2011

Dharamveer @ Karamveer

APPELLANT

Vs

Arvind Kumar and Others

RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0519

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Vikas Sharma, for the Appellant; S.L. Gupta, for R-3, for the Respondent

Final Decision : Disposed Off

Judgement

G.P. Mittal, J.—The Appellant Dharamveer @ Karamveer impugns a judgment dated 01.08.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 10,459/- in favour of the Appellant for having suffered injuries in a motor vehicle accident which occurred on 13.10.2008, the Respondent No. 3 Insurance Company was exonerated of its liability. In the absence of any Appeal by the driver, owner or the Insurer, the finding on negligence has attained finality between the parties.

2. There is twin challenge to the judgment. Firstly, it is urged that the compensation awarded is very low. Secondly, it is contended that the vehicle was duly insured, yet, the Claims Tribunal exonerated the Insurance Company on the ground that it (the Insurance Company) had successfully established the breach of the terms of the policy. It is urged that the Respondent Insurance Company failed to prove the willful breach of the terms of policy. Hence, it could not avoid its liability.

3. The Claims Tribunal dealt with the issue of compensation as under:-

....Petitioner after the accident dated 13-10-2008 was taken to Sanjay Gandhi Hospital and his MLC shows that he only suffered simple injuries. He suffered

only abrasions and swellings on his right leg. He was not admitted in hospital even for a single day and was advised only some medicines to be taken for few days. The medical record shows that petitioner visited hospital only twice after the date of accident as OPD patient on 17-10-2008 and 21-10-2008. The version of the petitioner that he suffered grievous injuries is not correct and not supported by any medical record. There is no medical bill produced by petitioner. His deposition that he spent sum of Rs. 30,000/- upon his medical treatment is liable to be rejected because petitioner got all his treatment from govt. hospital where it was given free of costs. Thus it can be said that maximum the treatment of petitioner continued for a period of seven days.

Petitioner alleged that he spent Rs. 4,000 to 5,000/- upon conveyance and Rs. 8,000 to 10,000/- upon special diet but this claim is highly excessive and exorbitant because after the date of accident there are only two visits to hospital as per medical prescription. Petitioner might have gone to hospital on some conveyance but two visits to hospital could not be so much expensive as claimed by the petitioner. There is no evidence of expenses incurred on conveyance so in the present situation, I deem it proper to award lump sum Rs. 500/- towards conveyance charges. He is however entitled to sum of Rs. 1,000/- only towards special diet in lump sum as normally in case of injuries, some healthy food, milk and fruit juices etc. is provided in addition to the normal food.

As held above that treatment of petitioner continued for about seven days so he is entitled to loss of income for this period of seven days. Petitioner has not brought on record any proof of his work and income so by presuming him as skilled person being painter, his income under minimum wages at relevant time is taken at Rs. 4,107/- per month. Petitioner is thus entitled to loss of income of seven days in round figure at Rs. 959/-. The claim of petitioner that he could not go for his work for six months due to accidental injuries is not reliable and acceptable being not supported by any medical record and his request to grant compensation for loss of income of six months is rejected because his medical record nowhere shows that he was ever advised bed rest even for a single day or was prohibited to attend his work or job.

Petitioner might have suffered some pain and sufferings due to simple injuries and might have remained under shock of accident. Keeping in view of nature of injuries and period of treatment, he is granted lump sum amount of Rs. 8,000/- under this non pecuniary head towards pain and sufferings etc.

4. Thus, it is apparent that the Appellant suffered only simple injuries. He was not admitted in the hospital at all. He had to pay just two visits to the hospital. The determination of compensation by the Claims Tribunal is just and reasonable.

5. In a separate judgment of this Court in *Beerpal & Ors. v. Arvind Kumar & Ors.*, MAC APP.963/2011 decided by this Court by an order of even date relating to this very accident, I have dealt with the issue of the liability of the Insurance Company in Paras 10 to 21 of the Judgment. In Para 21, I have concluded as

under:-

21. Since the report of the Transport Authority was not proved in accordance with law, the same is not admissible in evidence. Once the report Ex. R3W1/8 is excluded from the evidence there is no material on record to show that the driving licence No. 5875/98 available on record was a fake driving licence. The Insurance Company, therefore, was not entitled to avoid the liability.

6. Respondent No. 3 the New India Assurance Company Limited is directed to deposit the compensation awarded along with interest with the Claims Tribunal within six weeks and shall be released to the Appellant on deposit.

7. The Appeal stands disposed of in above terms. Pending Applications stand disposed of.